THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION NO.7598 OF 2005

Dated: 06th APRIL, 2006.

Between:

M. Venkata Swamy Naidu … Petitioner

And

1. The Executive Engineer, I & CAD, Irrigation Division, Chittoor, and 3 others. … Respondents.

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ORDER :

The petitioner claims to be the owner of different extents of agricultural land situated in Sy.Nos.95/1, 94/9, 87/2, 94/10, 95/3, 122/3 and 89/1 under the ayacut of a tank called Pillari Cheruvu of Kanipakam village, Chittoor District.

It is stated that the said Pillari Cheruvu is situated in Sy.No.265 of Kanipakam covering 150 acres of ayacut. The said tank not only caters to the needs of agricultural lands for 2 crops but also it is the main source of water to other three small tanks. That apart, the Gram Panchayat has also been getting major income by way of auctioning fishing rights of the tank every year.

In this writ petition, the petitioner seeks a declaration that the alleged action of the respondents in not storing the water to the full tank level and laying a road across Pillari Cheruvu by reducing the tank and tank-bed land as arbitrary and illegal.

It is alleged that at the instance of some local politicians and owners of adjacent lands there was a proposal earlier to lay a road by shifting the existing tank-bund of Pillari Cheruvu under the guise of development of three temples situated in Kanipakam namely Vara Siddhi Vinayaka Swamy Temple, Sri Manikanteswara Swamy Temple and Varadarajulu Swamy Temple. The farmers of the village opposed the said proposal since if any such road is laid, the tank will loose

more than 3 acres of land. Though the Revenue Authorities assured that the existing tank would not be disturbed and the proposed road would not be laid, subsequently the respondents once again proposed to shift the tank-bund inside the foreshore area, on a request made by the 4th respondent - Vara Siddhi Vinayaka Swamy Temple for the purpose of development of temples as per the Master Plan. The 1st respondent – Executive Engineer, I & CAD Department, Irrigation Division, Chittoor addressed a letter dated 20-7-2004 to that effect calling upon the Executive Officer of the 4th respondent temple to provide necessary funds which were estimated at Rs.13.35 lakhs. The petitioner contends that the said action of the respondents is nothing but assigning the tank-bed land to the 4th respondent temple for which the 3rd respondent – District Collector has no power or authority as per law. It is contended that under G.O.Ms.No.157, Revenue (M) Department, dated 13-2-1987 there is a total prohibition of leasing out of the tank-bed lands under any circumstances. The further contention is that under Board Standing Orders (BSO) 15 (4) and 16, the assignment of tank-bed land is impermissible. That apart, under Section 80 of the A.P. Panchayat Raj Act, 1994 all water sources are vested with the concerned Gram Panchayat and therefore the tank-bed lands cannot be transferred or assigned without the consent of the Gram Panchayat.

It is also contended by the petitioner that Article 48-A of the Constitution of India mandates that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country and Article 51-A also enjoins that it shall be the duty of every citizen of India to protect and improve the natural environment and therefore the impugned action of the respondents in transferring the existing tank-bed lands is contrary to the Constitutional mandate.

The learned Senior Counsel Sri P. Gangaiah Naidu appearing for the petitioner, while reiterating the contentions raised in the writ petition, placed before this Court a copy of the proceedings of the District Collector, Chittoor, dated 10-6-2005 whereunder administrative sanction was accorded for shifting of existing bund of Pillari Cheruvu from Ch. 650 M to 900 M near Sri Manikanteswara Swamy Temple at Kanipakam village for Rs.11.90 lakhs, and contended that unless the proposed works are stayed in all respects the petitioner stands to suffer irretrievable injury.

On the other hand, the learned Advocate General appearing for the respondents submitted that the shifting of the existing bund to a little extent towards the main tank will not affect either storage capacity or ayacut area under the tank as opined by the technical experts and therefore none of the ayacutdars would be prejudiced in any manner whatsoever. As such, the writ petitioner, who is not even an ayacutdar under the tank in question has no locus standi to question the proposed work which is taken up for the purpose of construction of the Mahaprakaram around the three temples as per the Master Plan developed by the 4th respondent.

At the outset, it is to be noted that the proposed shifting of the tank-bund is for the purpose of construction of a Mahaprakaram around the three temples in Kanipakam namely Vara Siddhi Vinayaka Swamy Temple, Sri Manikanteswara Swamy Temple and Varadarajulu Swamy Temple.

The Executive Officer of the 4th respondent temple filed a counter-affidavit stating that it is proposed to construct a mahaprakaram around all the three temples and also there is a proposal to lay four mada streets to maintain Utsavams as per sastras. It is also required to provide parking areas for the pilgrims coming from

far off places and accommodation facilities, kalyana katta, administrative offices, etc. In such process, about 40 acres of land was acquired and an approved Master Plan is being developed. Thus, it requires shifting of the existing bund to a little extent towards main tank which is not going to affect either storage capacity or ayacut area. After shifting the bund, North mada street would be laid and Mahaprakaram would be constructed. It is further stated that the petitioner belongs to Thiruvanam village and his lands are situated under the ayacut of Bommasamudhram Cheruvu. He has nothing to do with the present tank and ayacut thereunder. As a matter of fact, the real ayacutdars of Pillari Cheruvu did not raise any objections. It is also stated that in recent years Pillari Cheruvu is not even maintained with full water capacity and the question of overflowing from this tank to Bommasamudhram Cheruvu does not arise. It is also stated that under the present project, all the safety measures are taken and the area that may be lost for the project will be compensated by increasing the depth of the existing tank and therefore there is no decrease in its capacity. The drinking water problem of entire area of village is also taken care by the temple authorities and in fact the water is being supplied to the major portion of the village from the bore-well of the temple. It is further explained that the competent authorities inspected the location and the technical people of concerned department prepared an estimation in which it is noted that a very negligible part of the tank's capacity would be lost and the same would not affect the ayacut in any manner whatsoever.

As explained in the above counter-affidavit, it is clear that all the necessary aspects to protect the nature of the tank, including environmental aspects, have been thoroughly examined by the respondents while taking steps for implementation of the Master Plan developed by the 4th respondent.

The counter-affidavit filed by the 1st respondent - Executive Engineer also shows that as per the estimates prepared by the Technical Experts of the Irrigation Department, by shifting the bund into foreshore area, the capacity of the tank is likely to be reduced by 0.12 Mcft which is negligible when compared to the total capacity of the tank i.e., 16.65 Mcft. The technical experts also expressed that it will not affect the ayacut in any manner. That apart, the 4th respondent also undertakes to increase the depth of the tank so as to balance the original capacity of the tank. In the circumstances, it is clear that the allegation of the petitioner that the proposed construction of Mahaprakaram would affect the interests of the ayacutdars is incorrect and baseless. As a matter of fact, the specific case of the 1st respondent – Executive Engineer is that the tank in question is not maintained with full water capacity in the recent years.

It is relevant to note that the Executive Engineer, I & CAD Department, Irrigation Division, in his counter-affidavit stated that the tank in question – Pillari Cheruvu – is situated to the North of Lord Vinayaka Swamy Temple, Kanipakam which is at a distance of 11 Kms from Chittoor town. He has also reiterated in his counter-affidavit that by shifting the bund in the foreshore area, 0.12 Mcft capacity of the tank-bund would be lost which is negligible when compared to total capacity of the tank which is 16.65 Mcft and will not affect the ayacut in any manner. It is also stated that the said loss was already compensated by undertaking de-silting works of more than 5,000 Cum amounting to 0.20 Mcft. He also made it clear that no other tank, except Pillari Cheruvu is covered by the work taken under the Master Plan. He also stated that Bommasamudhram tank is fed by surplus water of Agarampalle tank from check-dam channel and Putta Cheruvu besides its self-catchment and the surplus water from Kanipakam tank is not a prime source to the said Bommasamudhram tank and other two small tanks.

Having regard to the facts noted above, it is clear that the work in question was cleared after considering several aspects elaborately by expert bodies taking particular care with regard to the protection of the capacity of the tank in question. There is absolutely no basis for the allegation made by the petitioner that the ayacutdars would be affected by the reduction of the area of the tank. Particularly since the lands of the writ petitioner are not covered under the ayacut of the tank in question and in the absence of any material to show that other ayacutdars ever raised any objection against the proposed work, I do not find any justifiable reason to issue a Mandamus as prayed for interdicting the proposed construction of Mahaprakaram. As noted above, the expert bodies opined that by virtue of the proposed alignment, the capacity of the tank in question will not be affected in any manner whatsoever and this Court will never sit in appeal over such opinion of the expert bodies.

That apart, the ayacut under the tank in question being more than 100 acres, Section 80 of the A.P. Panchayat Raj Act, 1994 has no application and therefore the work in question cannot be said to be vitiated for want of consent of the Gram Panchayat. The further contention of the petitioner that the proposed construction for the purpose of the fourth respondent temple is impermissible and in contravention of Board Standing Orders 15 (4) and 16 is also without any substance in the absence of any material to show that such assignment was made in favour of the 4th respondent.

On the basis of the material on record, I do not find any statutory violation nor there is any allegation of mala fides against any of the respondents. Since it is clear that the respondents have applied their mind to the various aspects of the matter before granting approval for the construction of Mahaprakaram in accordance with the Master Plan which is in public interest, the matter does not warrant interference by this Court in exercise of discretionary jurisdiction under Article 226 of

the Constitution of India.

The Writ Petition is devoid of any merit and accordingly the same is dismissed. No costs.

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G. ROHINI, J.

Dt. –4-2006
GBS

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